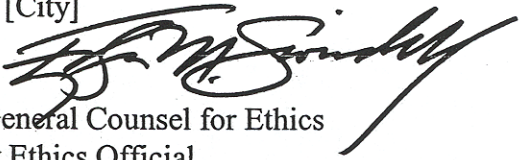




November 9, 2000

MEMORANDUM

TO: [Name]
Assistant Regional Counsel
Region [Number] - [City]

FROM: Edgar M. Swindell 
Acting Associate General Counsel for Ethics
Designated Agency Ethics Official

SUBJECT: Duty to Report Waste, Fraud, and Abuse

You have inquired whether there is an ethical obligation on the part of an HHS employee (or federal government employees in general) to report instances of waste, fraud, or abuse on the part of fellow employees in connection with government work? In response, I am providing the following statement of applicable law.

The Standards of Ethical Conduct for Employees of the Executive Branch, promulgated by the Office of Government Ethics (OGE), at 5 C.F.R. § 2635.101(b)(11) provide that "[e]mployees shall disclose waste, fraud, abuse, and corruption to appropriate authorities." Those portions of the residual HHS conduct standards that have not been superseded by the government-wide OGE rules still provide that "[a]n employee who has information which he or she reasonably believes indicates the existence of an activity constituting ... (b) mismanagement, a gross waste of funds, or abuse of authority...shall immediately report such information to his or her supervisor, any management official of the Department, or directly to the Office of the Inspector General." 45 C.F.R. § 73.735-1302(b). The regulation further directs employees to chapter 5-10 of the Department's General Administration Manual for procedures.

The concept, referred to in the HHS regulation, that the duty to report is triggered by "information from which one may form a reasonable belief" has not been defined definitively. In bar opinions discussing the parallel obligation of attorneys to report violations of the Rules of Professional Conduct by members of the bar, the interpretation has been that the obligation to report arises only if the individual has a "clear belief that misconduct has occurred, and possesses actual knowledge of the pertinent facts." D.C. Bar Opinion No. 246 (Revised). Another bar opinion succinctly states that "[a]lthough absolute certainty is not required, ... a mere suspicion that misconduct has occurred does not give rise to an obligation to report." New York State Bar Association Committee on Professional Ethics Opinion No. 635.

I trust that this information responds adequately to your inquiry. If I can provide further assistance, please let me know.